

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA SMITH and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Chicago, IL

*Docket No. 97-2775; Submitted on the Record;
Issued October 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established entitlement to a schedule award; (2) whether appellant has established that she sustained recurrences of disability on or after May 6 or June 17, 1996; and (3) whether appellant has established that she sustained an occupational injury in the performance of duty.

The Office of Workers' Compensation Programs has accepted that appellant sustained a traumatic injury on October 6, 1989, while sorting small parcels, which caused a right wrist sprain, tendinitis, and a cervical-thoracic strain. The Office subsequently accepted recurrences of disability and paid appropriate compensation.

Appellant returned to light duty but experienced flare-ups of her condition and intermittent periods of disability. Appellant underwent vocational rehabilitation and accepted a permanent modified clerk position on May 12, 1993.

On August 15, 1995 appellant filed a schedule award claim for permanent partial impairment of her right upper extremity. The Office asked Dr. Mitchell L. Goldflies, a Board-certified orthopedic surgeon and appellant's treating physician, to determine the extent of any permanent impairment. While Dr. Goldflies found an 18 percent impairment of appellant's right arm and referred to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* in his September 8, 1995 report, he attributed appellant's impairment to her myofascial condition, which was not an accepted diagnosis in this case.

The Office referred appellant to Dr. Julie M. Wehner, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Wehner diagnosed mild right wrist tendinitis and concluded that appellant's subjective complaints far outweighed any objective findings upon physical examination. She explained that none of appellant's complaints of pain could be substantiated by any clinical or radiological findings. Dr. Wehner found "no degree" of permanent impairment or continuing disability of appellant's right arm, based on the A.M.A.,

Guides. Because Dr. Wehner's February 19, 1996 report conflicted with the opinion of Dr. Goldflies, the Office referred appellant to Dr. Michael D. Kornblatt, a Board-certified orthopedic surgeon, for an impartial medical examination.

Dr. Kornblatt examined appellant and the medical records on July 1, 1996. He reported that he found full range of motion of the shoulders, elbows, wrists, and fingers, with diffuse tenderness on the right forearm. Dr. Kornblatt concluded that appellant had developed a chronic pain syndrome but that the accepted wrist strain had resolved six to nine months after the injury and had not resulted in any permanent disability or impairment.

On July 6, 1996 appellant filed a notice of recurrence of disability, claiming that the repetitious work of lifting, merging, and packing files since January in preparation for an office move had caused "very bad pain," swelling, and muscle spasms in her right forearm as well as some pain and numbness in her neck, shoulder and back.

On August 13, 1996 the Office denied appellant's claims for a schedule award and for a recurrence of disability on the grounds that the medical evidence was insufficient to establish either a causal relationship between disability in May and June 1996 and the 1989 work injury, or any permanent partial impairment of her right upper extremity.

Appellant requested an examination of the written record. On January 8, 1997 the hearing representative determined that the case was not in posture for decision on three grounds: that appellant should have filed a notice of occupational disease for the wage-loss compensation she was claiming from January to June 1996 as a result of her work activities during this period, instead of the recurrence claim; that the Office failed to consider whether the myofascial pain syndrome or the chronic pain syndrome diagnosed by Dr. Goldflies and Dr. Kornblatt were causally related to the 1989 injury; and that the Office's decision regarding the schedule award was premature as it was uncertain which of appellant's current conditions were causally related to factors of her federal employment. The hearing representative stated that to resolve these issues, the Office was to start "anew" and prepare a statement of accepted facts and then refer appellant for another second opinion evaluation to resolve these issues.

The hearing representative essentially found that Drs. Goldflies, Wehner and Kornblatt's opinions were of limited probative value because they did not rely upon a proper statement of accepted facts and did not effectively evaluate whether appellant's current complaints were causally related to either her accepted injury or to factors of her federal employment, since her return to modified work. The hearing representative therefore required that the Office prepare a new statement of accepted facts and then refer appellant to another second opinion physician, who was to address specific questions regarding the cause of appellant's current condition and the degree of permanent impairment, if any.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the Office's hearing representative, dated and finalized on January 8, 1997, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

The Office thereafter referred appellant to Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Sidell submitted a March 11, 1997 report to the record concluding that appellant had no current objective findings of any condition causally related to her work activities; that appellant had no physical restrictions due to the accepted employment injury; and that appellant had no permanent impairment of the right upper extremity.

On April 22, 1997 the Office denied the claims for recurrences of disability, based on the second opinion evaluation of Dr. Sidell. The Office also found that appellant was not entitled to a schedule award as the evidence did not establish that she had a permanent impairment causally related to the accepted 1989 employment injury.

On April 28, 1997 appellant filed a notice of occupational disease, claiming that the pain in her right forearm, which she had experienced off and on since a traumatic injury on October 6, 1989, was getting worse and was sometimes unbearable. Appellant explained that her pain was work related because prior to the 1989 injury she had never had problems with her right upper extremity. She added that too much repetitive work or even cold air could set up the pain.

On August 27, 1997 the Office denied appellant's claim for occupational disease on the grounds that the medical evidence was insufficient to establish that appellant sustained an injury caused by work factors. The Office found that Dr. Goldflies failed to provide a diagnosis or to explain how appellant's employment caused her arm condition.

The Board finds that appellant has failed to meet her burden of proof in establishing her entitlement to a schedule award.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ The Board has held that to establish entitlement to a schedule award, the evidence of record must demonstrate that the claimant had a permanent impairment as a result of the employment injury, rather than a temporary condition.⁴

Pursuant to the hearing representative's instructions, upon remand of the case to the Office, Dr. Sidell examined appellant on March 11, 1997 and reviewed the medical records as well as a statement of accepted facts prepared by the Office following remand by the hearing representative. Dr. Sidell stated that appellant demonstrated some pain and avoidance-type behavior during the examination, that she complained of significant discomfort to extremely

¹ 5 U.S.C. § 8101 *et seq.*; 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *Rosie Esquivas*, 41 ECAB 243 (1989).

light touch over the shoulder and forearm, that she went almost limp when asked to move her arm, but passive range of motion and rotation were normal, that inspection of the right forearm and wrist revealed no obvious abnormalities, and that all major motor groups functioned normally when observed but appellant was unable to perform the same functions when requested. Dr. Sidell concluded that appellant's examination was "very inconsistent," with no significant objective findings to substantiate any current condition. He added that none of appellant's current subjective complaints had developed from the 1989 injury and there was no permanent impairment attributable to the injury.

In this case, Dr. Sidell's opinion is clear, logical and consistent with the facts of this case. He explained with medical rationale why appellant had no permanent impairment attributable to the 1989 injury and why appellant's current condition was not work related and he supported his conclusions with his clinical findings. The Board finds that Dr. Sidell's opinion represents the weight of the medical evidence on the issue of whether appellant sustained a permanent partial impairment of her right forearm. While appellant may experience pain and tenderness during work and daily activities, there is no medical basis for a finding that appellant's accepted employment injury caused a permanent impairment.

While Dr. Goldflies related that appellant had a permanent impairment of her right upper extremity due to myofascial syndrome, he did not provide the medical rationale necessary to causally relate this diagnosis to the accepted injury, and did not explain why this would have caused a permanent impairment. There is essentially no medical opinion of record that residuals of the accepted employment injury caused appellant a permanent impairment. Therefore, the Board finds that appellant is not entitled to a schedule award under the Act.⁵

The Board also finds that appellant has failed to establish recurrences of disability on or after May 6 or June 17, 1996.

When an employee, who is disabled from the job she held when injured, returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative, and substantial evidence that she cannot perform such light duty.⁶ As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁷

In this case, appellant is not alleging a change in the nature and extent of her light-duty requirements outside of her medical restrictions, but rather that her light-duty activities caused right upper extremity symptoms and disability. Appellant submitted reports from Dr. Goldflies, her long-time treating physician. In his March 15, 1996 treatment note, Dr. Goldflies stated that appellant had a flare-up of her myofascial pain disorder, first diagnosed in July 1992. In his May 10, 1996 note, Dr. Goldflies reported a flare-up of appellant's right forearm pain and stated

⁵ See *James E. Jenkins*, 39 ECAB 860, 867 (1988).

⁶ *Richard E. Konnen*, 47 ECAB 388, 389 (1996).

⁷ *Gus N. Rodas*, 46 ECAB 518, 526 (1995).

that she had been unable to work since May 6, 1996. In his June 19, 1996 note, Dr. Goldflies reported a “recent flare-up” of pain, with no work since June 17, 1996.

On June 25, 1996 Dr. Goldflies clarified “some points” in his previous letter. He stated that the recent flare-up in her right forearm, neck and shoulder pain “were stated to be a direct cause of her work activities.” Appellant continued to display findings consistent with myofascial pain syndrome, which had been present for several years “as a consequence of her daily work activities.” Dr. Goldflies added that appellant required permanent work restrictions -- a five-pound lifting limit, a sitting job with good back support, and avoidance of all repetitive or fine manipulative work with the right upper extremity above chest level.

In response to the Office’s inquiry, appellant stated that from January through June 1996 she was assigned to be “moving captain,” which required her to pack files. Appellant described her duties as “constant repetitious work” pulling, lifting, merging, labeling and packing files, which she did for six hours on Fridays. Appellant acknowledged that she did not lift more than five pounds.

The Board has previously defined a recurrence of disability as a spontaneous return of disability due to the accepted employment injury.⁸ Dr. Goldflies reported periodic flare-ups of pain in appellant’s right upper extremity but failed to explain how such pain was related to the accepted work injury in 1989.⁹ Dr. Goldflies’ reports do not support a finding of a spontaneous return of disability, but in general terms relate appellant’s conditions to continued work activity. Further, in none of his reports did Dr. Goldflies conclude that appellant’s condition had worsened to the point where she was unable to perform the specified duties of the modified position. Therefore, the Board finds that the medical evidence is insufficient to establish that appellant’s current claimed disability resulted from the accepted work injuries, that the accepted condition of her right arm had worsened. Appellant therefore did not meet her burden of proof to establish a recurrence of disability.

The Board also finds that appellant has not established that she sustained an occupational injury in the performance of her employment during 1996.

Based upon appellant’s statements that she sustained further injury to her right upper extremity due to performance of repetitive activities during an office move commencing in January 1996, the Office hearing representative advised appellant to file an occupational injury claim.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the

⁸ *Stephen J. Perkins*, 40 ECAB 1193 (1989).

⁹ *See Glenn Robertson*, 48 ECAB ____ (Docket No. 95-639, issued February 20, 1997) (finding that appellant failed to submit rationalized medical evidence explaining how and why he was unable to perform his light-duty position).

presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

Appellant asserted that her duties from January through June were repetitive, but submitted no collaborating evidence that she was required to perform any of the filing duties other than at her own pace. Appellant asserted that she overexerted herself, but admitted that she did not work beyond her lifting restriction of five pounds.

Dr. Goldflies responded to the Office's inquiry about the causal relationship of appellant's employment to her arm condition. He stated on June 24, 1997 that "stress at work and repetitive activities initially were the etiology" of appellant's right upper extremity myofascial pain disorder, which had all been well documented in the past. Dr. Goldflies added:

"It [is] not my job to explain how specific work factors caused the patient's condition. The medical literature has been unable to accurately document the exact cause of repetitive strain injury in workers. If the findings, in your opinion, are not sufficient to support a diagnosis then you are unaware of the medical literature to discuss this further. Providing more documentation is a waste of both of our times because this has been done in the past.

"As previously stated, many times it is my feeling that the patient's work activities is the direct cause of her current condition and requires light-duty status and restricted use of the right upper extremity."¹¹

Dr. Goldflies refused to elaborate on his general statement that repetitive activities were the cause of appellant's condition. No discernible repetitive duties were part of the modified clerk position appellant accepted in May 1993. It was appellant's burden to provide rationalized medical opinion evidence to substantiate that the factors of employment she alleged did medically cause the diagnosed condition. Dr. Goldflies did not comply with the request for this specific information. Moreover, Dr. Sidell, the Office's second opinion physician, opined that

¹⁰ *Charles E. Burke*, 47 ECAB 185 (1995).

¹¹ The record contains a May 25, 1995 letter from Dr. Goldflies to the Office stating that it is a common practice of post office employees to take time off from work and then show up in his clinic for an evaluation and a return-to-work note covering the time they took off on their own. Dr. Goldflies added that on occasion employees will call in and notify him of a day off work, "which we always approve."

appellant had no significant objective findings to substantiate any current condition. The evidence of record therefore does not substantiate that appellant sustained an occupational injury due to factors of her employment.

The August 27, April 22 and January 8, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
October 18, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member